could take effect. See Gray, *Perpetuities* (3d ed.) secs. 250, 78. This was in substance, if not in terms, the construction adopted by the Connecticut court. The result, however, was to give to the children as heirs, in fee simple and free of any trust or future limitation, the same property which they had forfeited as equitable legatees subject to gifts over on failure of issue. It may be conceded that the testator apparently did not consider the possibility of all the children contesting; but it seems more in accord with his probable general intent to conclude that the forfeiture was not to take effect unless there was some child qualified, by refraining from contest, to receive the gift over. It is suggested that this result could be accomplished, independently of any waiver, and in strict accord with legal principles, by holding that the estates first given were to be cut short only by the operation of the executory devises, and that since an express or implied condition of all the executory devises had failed, the prior estates continued. *Cf. Harrison v. Foreman* (1800, Ch.) 5 Ves. 207; *Jackson v. Noble* (1838, Ch.) 5 Keen 590; *Hodgson v. Halford* (1878, Eng. V. C.) 11 Ch. D. 959; *Drummond's Ex'r. v. Drummond* (1875, Ch.) 26 N. J. Eq. 234.

WORKMEN'S COMPENSATION ACT—CONFLICT OF LAWS—FOREIGN CONTRACT OF EMPLOYMENT.—A workman employed in New York for labor within that state was subsequently sent to work in Connecticut pursuant to a special arrangement as to wages entered into with his employer at the latter's New York office. Nothing was said about compensation in case of injury. The workman was injured at his work in Connecticut. *Held,* that the Connecticut Workmen's Compensation Act was applicable. *Banks v. Albert D. Howlett Co.* (1918, Conn.) 102 Atl. 822.

This case presents a complication of two vexed questions, both of which would be avoided under the tort rule of construction of workmen's compensation acts, adopted in *Gould's Case* (1913) 215 Mass. 480, 102 N. E. 693. The first relates to the rule applicable to a contract where a place of performance distinct from the place of making is contemplated. In applying the rule of the place of performance, the principal case follows the established Connecticut doctrine. *Chillingworth v. Eastern etc. Co.* (1895) 66 Conn. 306, 33 Atl. 1009. The second question involves the choice between two possibly applicable compensation statutes, where an employment transcends state lines. In those jurisdictions where the contract theory of these statutes is adopted, the authorities are uniform in applying the statute of the forum to extra-territorial injuries arising under domestic contracts. *Post v. Burger* (1916) 216 N. Y. 544, 111 N. E. 351; *Kennerson v. Thames Towboat Co.* (1915) 89 Conn. 367, 94 Atl. 372; *Rounsaville v. Central Ry. Co.* (1915, Sup. Ct.) 87 N. J. L. 371, 94 Atl. 392; *Grinnell v. Wilkinson* (1916, R. I.) 98 Atl. 106. The inverse case of local injuries arising under foreign contracts has given rise to three divergent lines of decisions. Sometimes the *lex loci contractus* has been consistently held to govern, and the foreign statute applied. *Schweitzer v. Hamburg-American Line* (1912, N. Y. Trial T.) 78 Misc. 448, 138 N. Y. Supp. 944. See *Kennerson v. Thames Towboat Co., supra.* In one state it is held that the sending of the employee across state lines without dissent expressed pursuant to the terms of the compensation act of the new place of employment, creates a new contractual or quasi-contractual relationship, governed by the law of the latter place. *American Radiator Co. v. Rogge* (1914, Sup. Ct.) 86 N. J. L. 436, 92 Atl. 85, 94 Atl. 85. Other courts, while admitting that the foreign statute would be controlling if applicable, have resorted to the theory last mentioned, when the *lex loci contractus* happened not to possess an applicable statute. *Douthwright v. Champlin* (1917) 91 Conn. 524, 100 Atl. 97. By basing its decision on the finding of a real novation at the beginning of the work in Connecticut, the

principal case consistently adheres to the contract theory of its Compensation Act. Its intimation that the conclusion reached must be limited to such a situation of fact appears to involve a repudiation of *American Radiator Co. v. Rogge, supra,* which nevertheless is cited in the opinion with apparent approval. It also leaves *Douthwright v. Champlin, supra,* little ground for support. Manifestly the absence of a statute applicable to the contract in its inception has no tendency to show an intention to assume a new contractual relationship from the mere transit across state lines. To ascribe such a result is of course merely a verbal subterfuge for a plain switch to the tort theory of the local act. If the failure to express dissent from the latter is an expression of assent to its provisions, this can follow only from the already established premise that the act is applicable to all employment, irrespective of origin, within the limits of the state. Such applicability, however, can be established only on the theory that the statute enunciates a rule of policy applicable territorially after the manner of the law of torts. For a discussion of *Douthwright v. Champlin, supra,* see (1917) 27 YALE LAW JOURNAL, 113.

WORKMEN'S COMPENSATION ACT—INJURY DUE TO THIRD PERSON'S FAULT—SUBROGATION OF EMPLOYER TO RIGHTS OF EMPLOYEE.—An employee sustained an injury in the course of his employment due to the negligence of one not his employer. He filed a claim under the Workmen's Compensation Act, accompanied, as required by the Act, by an assignment of any claims against third persons. After allowance of his claim but before payment of the award, he brought this action against the third person responsible for the injury. While the action was pending, the defendant, through the Workmen's Compensation Commission, settled with the employer under the assignment. Thereafter the plaintiff applied to the Commission to withdraw his claim against the employer, and was allowed to do so. *Held,* that the assignment became effective when executed, and even if it could be avoided by withdrawal of the claim without the employer's consent, the defendant, having paid the assignee while the assignment was in effect, was protected by such payment against further liability. *Sabatino v. Crimmins Const. Co.* (1918, N. Y. Trial T.) 168 N. Y. Supp. 495.

Except in a few states, the statutory right to compensation given to an injured employee by the workmen's compensation acts does not in itself either impair or add to his common law rights against third persons. *Lester v. Otis Elevator Co.* (1915, N. Y.) 169 App. Div. 613, 155 N. Y. Supp. 524. He has an election of remedies, but having chosen one, cannot assert the other. *Turnquist v. Hannon* (1914) 219 Mass. 560, 563; 107 N. E. 443, 444; *Miller v. New York Ry. Co.* (1916, N. Y.) 171 App. Div. 316, 157 N. Y. Supp. 200; but see *Houlihan v. Sulzberger & Sons Co.* (1917, Ill.) 118 N. E. 429. And where he has elected to proceed against the employer, the latter has not, in the absence of express statutory provision, any recourse against the real tort-feasor. *Inter-State Tel. Co. v. Public Service Elec. Co.* (1914, Sup. Ct.) 86 N. J. L. 26, 90 Atl. 1062. In New York and a few other states there are express provisions by which an employer who is compelled to pay is allowed recourse against the person actually at fault. See *Sandek v. Milwaukee Elec. Ry. & Lt. Co.* (1916) 163 Wis. 109, 157 N. W. 579; *Grand Rapids Lumber Co. v. Blair* (1916) 190 Mich. 518, 157 N. W. 29; *Otis Elevator Co. v. Miller* (1917, C. C. A. 8th) 240 Fed. 376. The time when this statutory right becomes fixed in the employer depends, of course, on the differing phraseology of the statutes. The decision in the principal case seems a sound construction of the statute governing the case. A subsequent amendment has dispensed with the requirement of an assignment executed by the claimant, providing that "the awarding of compensation shall operate as an assignment of the cause of action." The statutes of a few other